

In the matter of All Saints, Waldron

Judgment

1. By a petition dated 18 March 2015, the priest-in-charge and churchwardens of All Saints, Waldron seek a faculty for (1) the installation of new lighting system and the rewiring of the existing wiring system; and (2) the removal of the pews in the north aisle to provide a flexible space for events and the installation of the server and cupboards. The petitioners have agreed in writing that the matter be determined by written representations.
2. The petition, when first presented, was defective in that the Schedule of Works or Proposals had been left blank. It has now been rectified. Regrettably, this was not the only shortcoming, as I shall come to later in this judgment. A covering letter dated 27 November 2015 indicated that the petitioners were ready to start work on the re-ordering and lighting works on 18 January 2016. Having regard to the shambolic state of the paperwork, the local objections, and the dubiety about consultation, this proposed commencement date was hopelessly optimistic. The inspecting architect confirming in an email of 21 January 2016 to the registry 'that when it came to my attention that the PCC had not obtained a faculty they were advised that works could not commence and the appropriate instruction was given to the contractor'. It appears from the papers that the petitioners may not have received adequate professional guidance from the architect whom they retained, but I lack the information to form any concluded view.

**Background**

3. The church is a grade I listed building dating from the eleventh or twelfth century. It lies within the Waldron Village Conservation Area.
4. The petitioners have supplied a single document entitled 'Statement of Significance and Statement of Needs'. It is clear from r 3.3 of the Faculty Jurisdiction Rules 2013 (hereafter 'the Rules') that two separate documents are envisaged. (This remains the case in r 4.3 of the Faculty Jurisdiction Rules 2015 which have superseded the Rules). Parishes should remind themselves of this. Whilst the issue of need is dealt with directly and robustly, there is nothing which describes 'the significance of the church ... in terms of its special architectural and historic interest' (to borrow from the wording in the Rules).
5. The parish's inspecting architect, Mr Robin Nugent prepared a separate document which is titled 'Statement of Significance'. This, though brief, is sufficient to comply with r 3.3(1)(a) in that it sets out the content of the church's listing description and an extract from Pevsner.

**Local objection**

6. Public notice of the petition elicited letters to the registry from the following parishioners: Mr and Mrs Farrant, Mrs S Garden (jointly signed by Mrs V Durne). The registry wrote to

each of them in accordance with r 9.3 of the Faculty Jurisdiction Rules 2013, then current (the Rules). Mrs Garden and Mrs Durne responded indicating that they did not wish to become parties opponent. There was no reply from Mr and Mrs Farrant within the stipulated 21 day period and they are therefore treated as having chosen not to become parties opponent. Accordingly, I take the contents of their respective letters into account, together with the petitioners' letter of response dated 7 January 2016 which is signed by Mr Richard Maylam, one of the churchwardens.

### **The proposals**

6. What is proposed is a reordering of the north aisle by removing the pews and lowering the Victorian softwood timber pew platforms to the same level as the ceramic tiled gangways to create a large area for multi-functional use. Provision is to be made for the installation of a servery and cupboards, the area is to be rewired and a new lighting system is to be installed.

### **Diocesan Advisory Committee**

7. The DAC issued its Notification of Advice on 26 October 2015 recommending the proposals, subject to a minor proviso. It also recommended that the petitioners consult Historic England and the Church Buildings Council. In Directions which I issued on 19 January 2016, I delegated to the registrar power to refer the matter to the DAC for further advice in the event that the Schedule of Works (once completed by amendment) differed from the proposals which had been considered by the DAC.
8. This matter was referred to an architect member of the DAC, Mr Peter Pritchett, who responded indicating that the DAC had experienced difficulty in extracting adequate information concerning the detail of the proposal and there had been considerable delay in supplying it. He stated that there had been no application for the acquisition and introduction of chairs to replace the pews which it was proposed be removed.
9. The petition does not seek permission for the introduction of chairs. It seems on the face of the papers that what the parish have in mind is a flexible open space which is not to be populated by chairs (even on a temporary basis). This suggests that the parish has departed from its aspiration, as articulated at its *2020 Vision* Inaugural Meeting that 'we will decide the extent and location of temporary seating on architectural and diocesan advice'.
10. Mr Nugent observes in his email of 20 January 2016 to the registry, 'The PCC is mindful that a temporary supply of chairs will be needed for weddings whilst the [replacement] chairs are chosen'. Mr Maylam, in his letter of 7 January 2016, states:

'The objectors appear to misunderstand what is proposed. Although the pews will be removed from the memorial Chapel, they will be replaced by 50 high-quality, comfortable chairs which are capable of being moved and stacked when necessary. This means that the chapel can continue to be used for services and quiet contemplation.'

He also indicates that the parish has included in its budget for these works the sum of £10,000 for 50 new high quality chairs. This amounts to £200 per chair but the petitioners have given no detail of the make or design of chair which they have in mind. As such this proposal remains inchoate.
11. With respect to Mr Maylam, any misunderstanding on the part of the objectors may well have its origin in the lack of clarity in the proposal and the confused and confusing manner

in which it was, and continues to be, presented. The professional colour booklet produced to illustrate the proposals shows a projected floor plan of the north aisle (Plan 1). It is annotated "all pews removed in north aisle" and there is no indication that chairs would or might be introduced. The criticism of the objectors for misunderstanding the proposal is, in my judgment, unfortunate and misplaced.

12. It would have been wiser and more constructive for the introduction of chairs to be have been included in the Schedule of Works in the petition and in consequence advertised to parishioners in the Public Notice. It is also worthy of note that the Public Notice merely alerts the public to reordering of north aisle and installation of new lighting. No reference is made to the introduction of the servery and cupboards nor to the structural work in lowering the pew platforms. The removal of the pews is not mentioned. It might be arguable that these aspects are subsumed in the generic term 'reordering' but the better course would have been to make express reference to the other features. In this instance, having regard to the letters of objection which engage with the more specific items, I do not consider that the public has been misled and do not consider it to be in the interests of justice and fairness for public notice to be repeated. However, the fact remains that the introduction of chairs has not been advertised, is not included in the Schedule of Works, and is not before me for consideration.

#### **Historic England**

13. My directions required service of special citation on Historic England. It responded in an email dated 22 March 2016 stating that Mr Nugent had provided further clarification on the proposals in his emails of 3 December 2015 and 21 March 2016 which it considered had addressed its original concerns. It did not wish to make any further comment on the proposals.

#### **Church Buildings Council**

14. I also directed that advice be sought from the CBC. A Form 11 Request was duly served. The CBC responded by email dated 11 March 2016 indicating that its views were adequately expressed in its correspondence with the parish which it exhibited to the email.

#### **The nature and extent of local objection**

15. I hope that I can fairly take the points of objection generically rather than ascribing them to individual letter writers. I note that the language of the letters speaks of concern, not objection, and that what is said is expressed in a measured and dignified manner by people who have long associations with the church. The writers recognise the need for flexible use of the church, and focus their observations on the following:
  - i. the removal of all the pews from the memorial chapel, and the effect upon the altar and memorial to the Fallen;
  - ii. placing storage cupboards in the historic Norman part of the building;
  - iii. not making provision for toilets;
  - iv. installing a kitchen which will detract from the beauty of the listed building;
  - v. the village hall provides perfectly adequate facilities for secular meetings;
  - vi. the lighting is excessive for a village church and disproportionately costly;
  - vii. the matter is not properly budgeted and will exhaust a large amount of PCC reserves;
  - viii. the lack of consultation with the congregation.

16. The petitioners' response is to be found in Mr Maylam's letter of 7 January 2016. He makes reference to the importance of keeping the PCC and the wider parish informed of potential projects. I regret to observe that if the petitioners' communications with the PCC and the parish have been as haphazard as their communications with the DAC, Historic England and the court, then I have doubts as to whether this worthy aspiration was carried into reality.
17. Mr Maylam refers to the back of the north aisle as being 'currently a disgraceful mess' and indicates that proper storage cupboards would make it much more attractive. He speaks of the flexibility which chairs would bring (although as noted above these do not form part of the proposal before me), particularly in allowing baptismal parties to gather around the font. He states that the improved facilities, notably the kitchen, would allow the space to be used for church meetings including the PCC (which currently meets in the priest's home), bible study, prayer groups, 'Friends' committee meetings, ministry team meetings (currently held at a priory) and standing committee meetings (currently held in a private house). He emphasises that there is no intention of converting the church into merely a meeting hall and that its sanctity as a place of worship will remain paramount. He suggests that the village hall is not a viable alternative as there is a charge for using it. He does however concede that a toilet is much-needed and that lavatory facilities and improved heating are under consideration for what he calls phase 2.
18. Mr Maylam makes reference to the need to update the electrics and the lighting. He raises safety concerns with the current aging installation and difficulties in replacing light bulbs which quickly fail. The parish have chosen a lighting designer whose work in other churches they consider suitable for their own.
19. As to funding, Mr Maylam makes reference to some of the funding coming from money raised by Friends of Waldron Churches, which was established to help conserve and improve the fabric of the two church buildings. The rest, he says, comes from funds held from the sale of the church hall.

#### **The relevant law**

20. Proposed changes to a listed church building need to be addressed by reference to a series of questions commended by the Court of Arches in *Re St Alkmund, Duffield* [2013] Fam 158:
  1. Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
  2. If the answer to question (1) is no, the ordinary presumption in faculty proceedings 'in favour of things as they stand' is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals. [...] Questions 3, 4 and 5 do not arise.
  3. If the answer to question (1) is yes, how serious would the harm be?
  4. How clear and convincing is the justification for carrying out the proposals?
  5. Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building ... will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or 2\*, where serious harm should only exceptionally be allowed.

## Harm

21. The question for consideration is whether the proposals, if implemented, would result in 'harm to the significance of the church as a building of special architectural or historic interest'. There is always a degree of subjectivity in answering this question. A gloss was placed on the *Duffield* guidelines in a judgment of a differently constituted Court of Arches in *Re St John the Baptist, Penshurst* [2015] WLR (D) 115 at paragraph 22:
  - (a) Question (1) cannot be answered without prior consideration of what is the special architectural and/or historic interest of the listed church. That is why each of those matters was specifically addressed in *Duffield* paras 57-58, the court having already found in para 52(i) that "the chancellor fell into a material error in failing to identify what was the special character and historic interest of the church as a whole (including the appearance of the chancel) and then to consider whether there would be an overall adverse effect by reason of the proposed change".
  - (b) In answering questions (1) and (3), the particular grading of the listed church is highly relevant, whether or not serious harm will be occasioned. That is why in *Duffield* para 56 the court's analysis of the effect on the character of the listed building referred to "the starting point...that this is a grade I listed building".
22. In *Re St Peter, Shipton Bellinger* 19 November 2015 (unreported), the Court of Arches took the opportunity of reminding chancellors, at paragraph 80:

the first *Duffield* question cannot be answered without proper analysis of what is the special architectural character and/or historic interest of the church. Nor can that analysis be done, or a sound conclusion reached on whether harm would be caused by the proposal (in this case the removal of the Victorian font), without examination of the listing description.
23. This listing description in this case, as set out in Mr Nugent's Statement of Significance, dates from 30 August 1966 when the grade I listing was applied and appears not to have been amended since. The salient part reads:

Built of stone rubble with tiled roof. Chancel nave with aisles, north porch and west tower with higher stairs turret. Chancel and nave are C13 with some decorated windows. Tower Perpendicular. South aisle dates from 1859-62 (R C Hussey).
24. For what it is worth, Pevsner describes the church as being mostly Early English, comments on windows, doorways and turrets and records the unusual width of both the thirteenth century aisle and the nave. Thus neither the listing description nor the editor of Pevsner makes reference to the pews, or indeed to any furnishings. They do not form part of an interior scheme of decoration worthy of specific mention, nor are they contemporary with the original construction of the church.
25. I note that the DAC Notification of Advice included the following:

In the opinion of the Committee the work or part of the work proposed is likely to affect:

  - the character of the church as a building of special architectural or historic interest;
  - the archaeological importance of the church;
  - archaeological remains existing within the church or its curtilage

26. I have the misfortune to find myself in respectful disagreement with the DAC. There is nothing to suggest any impact upon archaeological features at all and I cannot find any evidential basis for this assertion. In relation to the first bullet point (which is of course a matter of subjective judgment), whether viewed holistically or in respect to its component elements, I struggle to see any basis upon which the proposals might affect the character of the church as a building of special architectural or historic interest. Whilst as a matter of policy I would endorse the DAC leaning towards recommending consultation with amenity societies in borderline cases, I consider that in this instance the DAC may have set the bar a little too low. I am fortified in that conclusion from the fact that neither Historic England nor the CBC who were specially cited in reliance on the DAC certification had any comment to make. I do however observe that Historic England, in writing to Mr Nugent on 30 November 2015, observed 'the submissions in support of this application appear to have been hurriedly made' and list a number of obvious errors and internal inconsistencies. Inadequate attention to detail seems to be a recurring theme in this instance, and it has certainly over-complicated and lengthened the judicial task of determining the petition.

#### **Assessment of harm**

27. In the particular circumstances of this case, I do not consider that the removal of several rows of unremarkable pews from the north aisle, the introduction of storage and kitchen facilities, and a wholesale upgrade to the lighting system, whether individually or cumulatively, are likely to result in harm to the significance of this church as a building of special architectural or historic interest. I note, by way of illustrative example only, that in *Re Holy Trinity, Eccleshall* [2011] Fam 1, the Court of Arches did not consider that the introduction of a very large platform into a grade I listed church would be likely to affect its character as a building of special architectural or historic interest.
28. Were I to be wrong in my answer to question (1), the next matter for consideration would be the seriousness of the harm. On any view, the loss of a block of ordinary and nondescript pews in one of the aisles of a large church can at best be considered to be at the very lowest end of the harm scale. Neither the structure of the building, nor any of the admittedly few features mentioned in the listing description would be adversely affected. The introduction of storage units and a kitchen may not be to everyone's taste but any impact on the significance of the church as a building of special architectural or historic interest would be minimal.

#### **Justification for the proposals**

29. The petitioners' somewhat chaotic approach to this petition is reflected in the shambolic 'Statement of Significance & Statement of Needs', where a handwritten addition is all that the petitioners supply in relation to justification. I reproduce it in full:
- The fabric improvements are much needed. Our lighting is old and failing badly. It is also of poor quality. The reordering of the north aisle is very important because it is extremely congested. Cupboard space and access to the church is poor. It is difficult to conduct baptisms in this area because the font is in this area. It would open up the area and allow people to surround the font during baptisms. The proposed improvements would greatly enhance the beauty and tranquillity of our lovely old church, as well as improving the facilities for our church services and other events held in the church.
30. Fortunately for the petitioners, Mr Maylam's written response to the letters of objection descended into sufficient detail of need and justification to make good the oversight in the

Statement of Needs. I would remind all parishes of the guidance at paragraph 2.3 of the Chancellor's General Directions (Issue 4, January 2016):

It is important that the parish turns its mind to this question at the time the proposal is being formulated and sets out a cogent case, since this is central to the legal test which will be applied by the chancellor when determining whether to grant or refuse the faculty.

**Determination on the merits**

31. In the light of my assessment with regard to harm, resolving question (1) in the negative above, the second question of the *Duffield* guidelines is engaged whereby the ordinary presumption in faculty proceedings 'in favour of things as they stand' is applicable. This can be rebutted more or less readily, depending on the particular nature of the proposals.
32. The case for tidying up the church interior with custom-made storage units is cogent and convincing as is the freeing up of a level space in the north aisle for multiple purposes. Provided provision is made for the replacement of some of the pews with free-standing chairs the memorial chapel can continue in use as a place of prayer and reflection, which respects the sacrifice of those it commemorates. The need for improved lighting is powerful and compelling.
33. I consider the comments and observations of the writers of the letters objections to be valid, well-intentioned and sincerely held. In particular, I have sympathy for them in dealing with the stated proposal of simple removal of pews when, in the background and not part of the current petition, is the possible future introduction of chairs. Preserving the dignity of the side chapel is of considerable importance and this has not been sufficiently addressed by the petitioners who simply wish to clear it and then return to the question of introducing chairs at a later date. Rather like the box commonly painted onto busy road junctions with cross-hatched yellow paint, there are some things which one should not enter without first checking that one's exit is clear. In this instance presenting a petition for the removal of furniture without addressing what is to replace it is neither sensible nor is it wise stewardship. The court's decision on removal does not take place in a vacuum and will often be predicated on what is proposed to take its place.
33. A budget of £200 per chair might stretch to durable and attractive wooden chairs or benches, but upholstered chairs are generally out of keeping with grade I listed churches as are plastic stacking chairs. This court cannot run the risk of permitting the parish to remove perfectly serviceable pews only for the parish to plead poverty or change of mind and not come forward with proper proposals for a worthy replacement.
34. In my judgment, notwithstanding the church's grade I listing, the benefit of the proposals outweigh the minor harm which will result and the petitioners have discharged the burden of proof whereby a faculty should issue. On a minor technical matter, there is a radiator shown next to the font which will need to be removed although this is not expressly mentioned in the Schedule of Works.
35. However, this finding is predicated upon the parish replacing the pews to be removed with an appropriate alternative. A faculty will not issue and work may not commence until the design, make and number of replacement chairs or benches has been approved by the court.

And before such approval is sought the parish must consult the CBC, the DAC and the parish more widely, including further public notice.

36. Furthermore, I would urge the parish, if it is serious about providing toilet facilities, to consider doing so at the same time as the other works are undertaken. It appears to have the money. It appears to recognise the need. The piecemeal approach to realising a vision can serve to stultify and exhaust a parish, where a slightly more ambitious project can be achieved swiftly, decisively and with less upheaval. I would also hope that having learned from its mistakes, the parish could present a future petition with greater confidence and competence. It will also enable the petitioners to build bridges with those who – understandably in my view – have been upset at the poor level of consultation over the proposals.
37. Finally, I should restate the position that it is not the role or function of the consistory court to interfere in financial decisions which are for the PCC. It would be a usurpation of their statutory discretion under the Parochial Church Councils (Powers) Measure 1956 for a chancellor to dictate to a PCC how much it should allocate its resources to its various projects and activities. Provided it has acted in good faith and has the funds available, the court will not review its decisions on spending.

The Worshipful Mark Hill QC  
Chancellor of the Diocese of Chichester

13 April 2016